

A
B R I E F A C C O U N T
O F T H E
N U L L I T Y
O F

King James's Title,

And of the
O B L I G A T I O N
O F T H E
Present O A T H S of A L L E G I A N C E.

Drawn up for Private Satisfaction.

L I C E N S ' D,
July 27. 1689.

J. Fraser.

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A
BRIEF ACCOUNT
OF THE
NULLITY
OF
King JAMES's Title, &c.

THAT King *James* was King *de facto* is denied by none. That he had some ground of Claim by vertue of his Natural Inheritance, is no less confessed; and that he might have answered the Ends of Government if he had made good his Promises, is on all hands acknowledged: all which might serve to justify that Allegiance which for the time was paid to him.

The great Question before us, is, Whether those destructive Principles and Undertakings, which he afterwards openly espoused, so much contrary to his Promises, did not render him incapable of the Government, according to the Fundamental Laws of this Land?

That we may have a clear account of this Question, we need only enquire,

First, What are the Fundamental Laws of this Land, with reference to the Power and Prerogative of the King, and the Liberties of the People?

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Secondly,

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Secondly, How great is the over-ruling force and obligation of them? And,

~~Lastly, What were the avowed Principles and Practices of the late King?~~

From which Premises it will be easie to demonstrate according to the known Constitution of the English Government, That a Person of such Principles and Undertakings, ~~must be utterly unqualified and incapacitated by the very~~ Fundamental Laws, for the Management of this Government.

First, That we may clearly discern what are the Fundamental Laws of this Land, we may consider in general what are the Fundamental Laws of all Government; and thence we may descend to consider more particularly what are the Fundamental Laws of this Land.

As it is granted on all hands, That Government is established by the Light of Nature; so there need no positive Edicts or Statutes to shew what are the Fundamental Laws of it. But these are discernable by the Light of Nature, and upon these prime Laws of Nature all positive humane Laws are superstructed.

As Nature has taught that there should be some Government, a Sovereign Power, and a Political Head in all Societies; so the same Natural Reason has taught, That all the Essentials of this Sovereign Power, which may be called the *Regalia*, should therein be established, and those Laws by which they are established, may be called Fundamental Laws.

The Prime Essentials of the Sovereign Power of each Political Head, as the Holy Scripture intimates, *Ephes. 4.* are the same in kind with those that appertain to the Head of a Natural Body, which are, To prescribe Rules for the Direction of all the Members; To see that those Rules be put in Execution; To examine and take cognizance of all Actions, and to give sentence accordingly: To dispense by certain Nerves and Joints, the common nourishment for the sustenance of all the parts; and to employ the Force of the whole Body for the common defence.

Accordingly

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Accordingly we find it is the Office of the Sovereign Power in any Nation, to prescribe in matters of Faith and Speculation (according to the Rule of God's Word) what Doctrines should be esteemed as Orthodox, and what to be condemned as Impious and Heretical. Also to appoint such Ecclesiastical Officers as might have Inspection over those that are to teach the same Doctrines. In matters of Practice to prescribe such Laws as ought to be observed in order to the Common Good. To appoint Judges and other Civil Officers, who might take cognizance upon all occasions of all Citizens and Members, who might give sentence upon them according to Law, and by whom the said sentence might be put in Execution. To have the Power of the Militia, and to exercise the Force of a Nation for the defence of it against Domestick or Foreign Enemies. Lastly, To command the Publick Revenues, to raise Taxes and Tribute, and to dispose the wealth of any Nation for the common support and sustenance of all the Members.

This is the account of Fundamental Laws in general; By which all the parts of Sovereign Power are established, which are somewhere to be found in every Form of Government.

Those may be said to be the particular Fundamental Laws of any Nation, by which it appears in whose hands all the parts of the Sovereign Power are deposited, and in what manner it is to be executed: By which the Authority and Prerogative of the Prince, and likewise the Rights and Liberties of the People are declared.

Thus if we proceed to consider the Fundamental Laws of the English Government, we may perceive they are framed with that happy Temperament as might be apt to render our Princes most glorious and honourable, and the People most happy. Our Good and Wise Ancestors have so disposed the Sovereign Authority, that our Kings should have no Power to do Wrong or Mischief, and they should want no Power to do good. The People should not be obnoxious to any unjust Arbitrary Empire, and yet withal they should be sufficiently restrained from unbridled Vice and Licentiousness.

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To this end it has been thought reasonable, That the whole Legislative power should not be lodged in the Hands of the King only : But the People require to be governed as becomes reasonable Creatures. And herein their Liberty does chiefly consist, that they can be *obliged by no Laws, but such as themselves approve* and judge most meet for the common good. This is the Prime Fundamental Law, That the Law of God should be owned as supream; That no *Doctrines of Religion* should be imposed but such as the People may perceive, and by their Representatives acknowledge as being conformable to the Divine Law ; That the People should enjoy the *safe possession of their Lives and Estates* in such manner as the Law prescribes ; That the *Wealth* of the Nation should be no otherwise disposed but as themselves allow by their Representatives in Parliament ; And that *sentence of Law* should be pronounced against them, not according to the sole Opinion of His Majesty's Judges, but with the joint *Verdict* of their fellow-Subjects and Citizens.

These are the Prime Laws which concern the Rights and Liberties of the People. In respect of the Prince, it is his great Prerogative to enjoy all Power that might be useful to put these Laws in execution for the common good and happiness of himself and his People. To this End he has a *Negative Voice* in making all Laws to be employed by the advice of his Council appointed for that and the like purposes, lest at any time a licentious Faction should disable him to answer the necessary Ends of Government. He appoints all *Judges and other Officers* who are concerned to execute the Laws in all Civil matters. He appoints those *Ecclesiastical Officers* who are to execute those Laws which have reference to Religion. He has the disposal of *all Arms*, and the Power of the Militia for the defence of the Government ; By which Power of disposing all the Principal Offices Ecclesiastical, Civil and Military, (if he approves himself sincere and faithful to his own and the Publick Interest and Honour) he cannot easily fail to establish his Authority so securely that

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that he may command all the Force of a Nation for his Service.

But that it may appear, This Power of *disposing all Magistrates was designed purely in order to the Publick Good*; All those Magistrates which he appoints, are sworn to execute their Offices strictly, according to Law, though it be contrary to the personal *Commands of the Prince*. The Law over-rules all those Commissions which he grants contrary to it self; and his Ministers shall be punish'd, as Betrayers of the Publick Weal, if they execute any of his private Commands contrary to Law.

This is the short account of the Fundamental Laws of this Land, which are antecedent to all Statute-Laws, the *prime Branches of our Common Law*; which are to be seen by the constant *Practices, Customs, and Usages* in the Administration of our Government.

In the next place, if we consider the great Authority of these Laws, the very nature of the thing requires, that they should *over rule all other Laws*, which were made only to be *subservient to 'em*; by which the great Ends of Government are supported. Therefore the Harmony and Analogy of our Constitution requires, That all other Laws should be construd'd in a sense consistent and agreeable to these Laws. Therefore it is confessed by Lawyers and Politicians, That the *Reason of State is the Rule and Measure of all Laws*. Upon this account it is declared, That all Acts and Statutes shall be null, which are contrary to *Mag. Charta, cap. ult. & 42 Ed. 3. c. 1.* Though that Charter contains only the principal heads of Caution against such Abuses as might tend to the Subversion of these Fundamental Laws; for the same reason it is declared, That the King can make no Act, which should tend to his own Disinheritance; because it is supposed, the great Council of the Nation is called together, to consult of the best means to secure the present Government, not to reduce it to a Democracy. Therefore, whatever the Terms of any Statute may be, neither the King, nor that Council are supposed to design his Disinheritance.

And for the same Reason, If the Members of Parliament, endeavouring to prevent Faction, should pass any Acts

Acts which might seem to tend to the enslaving of the People, such Statutes shall be so far null, or they shall be construed in such a qualify'd sense, as may be consistent with the Fundamental Laws; because otherwise this would be no less destructive of the Government than the former. And the People are supposed not to design any such change of Government, that their Lives and Fortunes be dependent purely at pleasure, but rather that the Government should be dissolved, than that they should be obliged to accept such intolerable Conditions of it. Which further appears, because not only they, but even the Princes themselves have still acknowledged, That the Government, has all along continued the same.

This is the account of the great Authority of these Fundamental Laws, by which the Rights and Liberties of the People are establish'd; by which the power of the Prince is most happily directed and limited. And so it is possible, that any of our Princes should have any Right or Power, but what they may claim by these Laws, that we have not so much as the Being of a Body Politick, by virtue of the same Laws. Therefore the same Laws which bestow the very Essence of the Body Politick, do likewise prescribe the Essential Qualifications of the Prince, or Political Head of it.

From whence we may see, in short, the definitive account of an English Monarch, That he must be such a Legal Heir of the Royal Family, who is willing to exercise the Sovereign Power according to the direction of the Fundamental Laws, for the preservation of his own People, and the due Rights of the People, in order to the Publick Good. And when by the constant Tenor of his actions he makes it appear, that he is obligatorily bent not to accept of such a Legal Power, he does thereby demonstrate, that he has renounced the Government, and has devoted himself of all power and Authority. Now, if we consider, in the last place, the Principles and Undertakings of King James, nothing can be more notorious, than that he was averse to such a Legal Power, and utterly incapable of it. For he did declare himself

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himself a zealous Member of a foreign Church and Society, which were the declared Enemies of our Government; by whose Canons he was obliged to destroy our Laws, and root out all the Lawful Members of the Government, as Hereticks. He was oblig'd to change our Constitution, by vertue of which he enjoyed his Power, to destroy our Laws, and with them our Liberty and Property, and his own Legal Authority, to make himself *Absolute* and *Arbitrary*, and all our Lives and Fortunes dependent upon his pleasure.

So that we see, in *Speculation*, the Essential Qualifications of an English Monarch could not be found in him; his Principles were utterly opposite and inconsistent; & therefore it is self-evident, he was incapable to be the true and Rightful King or Head of this Political Body.

The same did appear no less evident, in *Practice* than *Speculation*; for it is manifest in all his Undertakings, he went quite *Counter to the Fundamental Institution* of an English Monarch: Instead of *maintaining our Laws*, he usurped a Power to *suspend and null them*: Instead of *preserving the true course of Judicature*, he appointed such as were *Enemies* of the Constitution to be *Judges*, and *Jurors*, and *Officers*, to pass unjust Sentences upon the Legal Members, and to execute the same. Instead of *defending our Faith and Religion* established by Law, he was resolved to obtrude another that was *destructive* of it. Instead of appointing Magistrates, Ecclesiastical and Civil, that should be duly sworn, and zealous to maintain the Laws of Church and State, he was resolved to constitute none but such as were the professed Enemies, or such as he expected would prove the *Betrayers* of them, who should use all Arts of fraud and force to pervert the People and undermine the Laws. Instead of employing the Militia for the *defence* of the People, his Enterprizes were notorious, whereby he endeavoured to *enslave* them. He accepted no Taxes in the *ordinary course of Law*, and to answer the ends of it; but waited an opportunity to make himself *Master of all the Estates and Wealth* of the Nation. In short, he was oblig'd by his Principles, and wholly bent, in all his Endeavours, to destroy all the *proper Regalia of the English Monarchy*. His actions did loudly de-

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clare, That he renounc'd all Authority allowed him by the Fundamental Constitution. He depended altogether upon a Power which he expected to gain by force; upon which account he might be oppos'd in all such hostile Enterprizes, no less than any other open Invader.

By this means we find the *Legal Government* did, for the time, *expire*. His Commands were in a Language strange and unknown to our Laws, to which therefore none were bound to pay Allegiance. His Magistrates, such as had no Union or Communion with the lawful Members of the Kingdom, which might not therefore be moved or acted by them; insomuch as the Body Politick lay, as it were, a lifeless Carcass, as tho' we had been dissolved into an aggregate Multitude, having no common Interests, nor any proper Methods to pursue them by, reduced as it were to a state of Anarchy and Confusion.

Therefore it must be concluded, That when he *first embraced* these Principles, he became *uncapable* of our Legal Government, which he did thereby virtually renounce; and when he *first made his Designs public*, he likewise *made it appear how little Allegiance* was due to him.

No man can be invested with any Authority, but by his own consent; and when it appears, that he will not accept of that Authority which is consistent with the Constitution, he at the same time disclaims all those *Prerogatives* that are annex'd to that Authority.

If our Fundamental Laws require themselves to be observed beyond all other Laws, they must needs invalidate all such Pleas as might be brought from any other Laws, in the behalf of such a person, which might prove destructive of themselves; they can no more bestow or approve the Government of such a person, than they can require or approve the subversion of that Politie which they establish, or contradictions can consist together.

If a total Anarchy, or suspense of Government, be inconsistent with our Laws, much more such a Monarch, who will not only not execute, but is resolved to cancel them.

It is impossible to conceive an attempt of a more publick Robbery or tragical Mischief than this, That one man should make himself Master of the Lives and Fortunes of a whole Nation,

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tion, which he should by his Principles be obliged to destroy.

This is so great a Change, or rather Destruction, of our Government, as nothing could be greater. If a Duke of *Venice* should go about to make himself a Legal Monarch to establish the Government in his Family, to be administered according to Law; the Change had been insensible, in comparison of this, when a free People are wholly enslav'd, and are made Tenants at Will for all their Goods and Possessions. If it would be lawful to defend the Rights of the Republick, against the Usurpations of the one kind; it would be much more so, to defend our Rights against the other, which are far greater.

And so far is this Change from being feigned, that our Enemies did not only project our Ruin, but rather did openly triumph in the expectation of it.

From all which, we see the demonstrative Evidence of this Argument: Whosoever lives amongst us, cannot but know our Fundamental Laws and Customs, which by no means allow, but cancel that usurp'd Power and Authority of any Prince which is not directed by Law. And the same persons cannot choose but know the Principles and Undertakings of King *James*; that he did utterly disclaim such a limited Power, as being insufficient to answer his ends: And the Conclusion is contained in these *self-evident* Premises, That since he would not accept of such a Power, he could have no other Power or Authority, according to our Constitution; and consequently he could be no legal or rightful King & therefore his Title must be utterly null and void.

That our Laws might make it appear *more expressly*, that such a person is incapable of the Government, they have declared without all exception, That all such as revolt to that Church, which is our professed Enemy, shall be esteem'd as Traytors and Outlaws. And it would be strange, that any person should be capable to become the Head of the Body Politick, who by virtue of those Principles, was so utterly cut off from all share of Communion and Society in it, that according to the sense of our Laws, he became incapable to enjoy any privilege, as a common Member of it.

We see how excellently our Constitution is fram'd, which requires, that the Laws of God should be apply'd to our particular circumstances; and as each Member is concern'd for the Interest and Happiness of that Society to which he appertains, so they

they all are oblig'd, in their several Stations, to maintain the same Government, for the honour of God, and the good of the People : and therefore, in cases of extremity, they may use those means which are necessary for that end.

If there had been no Law for that purpose, yet the Law of Nature gives every Regular Government a Right to defend it self against all the professed Enemies of it.

It is a Maxim of our Law, That the Laws of God and Nature should take place before all other Laws. The same Law of Nature teaches, That he can never be capable to be the Head of any Society, who cannot employ the proper Offices of the Head for their due Ends, but is oblig'd to pervert them to quite contrary purposes ; such a Society is to all intents and purposes destitute of a Governour ; when he who usurps that place, neglects to afford those necessary assistances that are due from him. But the case is yet far worse, when such an Enemy challenges the Power and Trust, which belongs only to a Guardian and Father, who thinks it his Duty to ruine those whom he ought to protect and defend.

Since therefore it appears, That there was an utter incapacity in the Person of the late King, to become the Legal Rightful King of this Realm, and such an Incapacity as was grounded in the Laws of God and Nature, in the Fundamental and other Municipal Laws of this Land. Hence it follows, That none of these Prerogatives, *not to be resisted, not to forfeit, not to be depos'd*, (which by the Laws of God and of this Land, do seem plainly to be annex'd to the persons of all our True and Rightful Kings, acting legally, as the Church of *England* ever has and does still teach) could any way in-conscience be accounted due to him, who did not only grossly abuse, but quite endeavour'd to destroy the true Legal Power of an English Monarch. And therefore, so soon as his dissembl'd Incapacity was discovered, the Nullity of his Title might appear to have been from the Beginning. And consequently, since there can be no *Interregnum*, the Right must descend to such as were qualify'd according to Law, who with the Consent of Parliament, may dispose of the Regal Power in such manner, as might seem most useful for the publick Good. And if our Allegiance thus appear to be due to 'em, it ought to be declared in such manner, and by such Oaths as the Law appoints.

